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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

MICHAEL EVANS

CIVIL NO.

Plaintiff,

COMPLAINT AND DEMAND
FOR JURY TRIAL

v.

**GUARANTY RV, INC., abn
GUARANTY RV CENTERS**

Defendant.

(42 USC 2000e; 42 USC 1981;
Title VII; ORS 659A.030, ORS
659A.199, ORS 659A.230, ORS
659A.040, ORS 659A.109, ORS
659A.112, ORS 659A.118, ORS
652.355, ORS 653.060, ORS
659A.355 and ORS 653.601)

Nature of the Action

1.

This is an action for employment discrimination brought to secure relief, legal and equitable, for discrimination and harassment, retaliation and hostile work environment on the basis of race in violation of 42 U.S.C.

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§ 2000e (Title VII of the Civil Rights Act of 1964, hereinafter “Title VII”) and 42 U.S.C. § 1981, ORS 659A.030, ORS 659A.199, ORS 659A.230, ORS 659A.040, ORS 659A.109, ORS 659A.112, ORS 659A.118, ORS 652.355, ORS 653.060, ORS 659A.355 and ORS 653.601.

Jurisdictional Allegations

2.

This Court has federal question jurisdiction pursuant to 42 U.S.C. § 2000e *et seq.*, 42 U.S.C. § 1981, 28 U.S.C. §§ 1331 and 1343. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

3.

Plaintiff filed a timely claim with the Equal Employment Opportunity Commission (“EEOC”) raising the issues alleged herein.

4.

Plaintiff has received the required Notice of Right to Sue from the EEOC authorizing Plaintiff to commence a civil action against the Defendant. Plaintiff has timely filed his Complaint.

General Factual Allegations

5.

At all times mentioned herein, Plaintiff, Michael Evans, (hereinafter “Plaintiff”) was a citizen of Junction City, Oregon.

6.

Defendant, Guaranty RV, Inc., abn Guaranty RV Centers, (hereinafter “Defendant”) was and is at all times herein mentioned a

domestic business corporation and is and was at all times herein mentioned doing business in Lane County, Oregon. At all material times, Defendant acted through its employees who were acting within the scope of their agency and employment for Defendant.

7.

Plaintiff, a black male, was hired by Defendant on or about February 2014. Defendant terminated Plaintiff's employment on or about April 10, 2019.

8.

During Plaintiff's employment, Defendant's employees, including but not limited to, Mark Nored, Shane Doyle, Kellan Quick, Kimberly Forte, and Katlin Deardorff, subjected Plaintiff to a course of racially discriminatory and harassing behavior which involved outrageous comments when referring to African-American people. These comments include but were not limited to:

- a. "nigger"
- b. "jungle fever"
- c. "Driving Miss Daisy"
- d. "The Jeffersons"
- e. "monkey"
- f. "spear chucker"
- g. "get a noose"
- h. "lynch"

- i. "token black in the room"
- j. "the black guy"
- k. "the big black guy"

9.

During Plaintiff's employment, Defendant's employees, including but not limited to, Mark Nored, Shane Doyle, Kellan Quick, Kimberly Forte, and Katlin Deardorff, subjected Plaintiff to a course of racially discriminatory and harassing behavior which involved outrageous actions and disparate treatment regarding African-American people. These actions include but were not limited to:

- a. Defendant routinely refusing to assign Plaintiff promising sales leads, even though sales leads are supposed to be assigned using a neutral "turn" system where leads are distributed in a set order.
- b. Defendant ridiculed and berated Complainant in front of the rest of the sales staff.
- c. Refusing to compensate Plaintiff with supplemental hourly pay.
- d. Another employee driving slowly past Plaintiff while displaying a confederate flag in his window.
- e. Referring to Plaintiff's office as his "cage" and make comments about him needing to stay "locked up" in his office.

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10.

On or about December 10, 2015, Plaintiff suffered a serious knee injury while attending a company-sponsored employee retreat at a football field.

11.

Plaintiff filed a workers' compensation claim.

12.

In retaliation for Plaintiff's invocation of his rights under the Oregon workers' compensation system and because of his complaints about race discrimination, Defendant unlawfully adjusted Complainant's sales figures.

13.

Plaintiff complained about the unlawful adjustment to his sales figures, but it was never corrected.

14.

Defendant has failed to appropriately engage in an interactive process with Plaintiff to accommodate his disabling injury.

15.

Defendant expressed hostility toward Plaintiff due to his workplace injury and disabling medical condition and has even called Plaintiff "lazy" because of his restrictions.

16.

Plaintiff's medical condition limits his ability to stand and to walk for prolonged periods because of pain. This adversely affects his ability to

participate in sales shows and off-site events, which therefore affects his sales performance.

17.

Plaintiff complained about racially offensive behavior that he learned occurred at a company dinner.

18.

Plaintiff was retaliated against by other employees because he made complaints about racial discrimination and harassment, including overhearing a conversation between other employees that made him fearful that they were plotting to break into his vehicle to place items there that would likely lead to him being terminated. Plaintiff reported this incident to the police.

19.

Defendant attempted to undermine Plaintiff's sales performance by depriving him of sales opportunities and interfering with his ability to close deals by denying him the same degree of negotiating flexibility afforded to other salespeople.

20.

Defendant terminated Plaintiff in substantial part due to his opposition to unlawful employment practices in violation of ORS 659A and based on his race.

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21.

Defendant opposed the harassment and on multiple occasions complained to management personnel. The harassment never stopped.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1981)

22.

Plaintiff realleges paragraphs 1 through 21.

23.

Defendant engaged in the treatment of Plaintiff as alleged above because of his race and/or because he complained about racial discrimination.

24.

As a result of those acts, Plaintiff has suffered emotional distress all to his non-economic loss in the sum of \$2,000,000.

25.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial, and Plaintiff will continue to have lost income in the future.

26.

Defendant's acts were malicious and/or reckless and Defendant should be assessed punitive damages in an amount to be determined by a jury, which sum is alleged to be \$4,000,000.

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27.

Plaintiff is entitled to reasonable attorney's fees and expert witness fees pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 2000e)

(Title VII – Hostile Work Environment)

28.

Plaintiff realleges paragraphs 1 through 27.

29.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

30.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in amount of up to \$4,000,000.

31.

Plaintiff is entitled to recover costs and attorney fees pursuant to 42 U.S.C. § 2000e, *et seq.*

THIRD CLAIM FOR RELIEF

(Title VII – Retaliation)

32.

Plaintiff realleges paragraphs 1 through 31.

33.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial, and Plaintiff will continue to have lost income in the future.

34.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

35.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

36.

Plaintiff is entitled to recover costs and attorney fees pursuant to 42 U.S.C. § 2000e, *et seq.*

FOURTH CLAIM FOR RELIEF

(ORS 659A.030 – Retaliation)

37.

Plaintiff realleges paragraphs 1 through 36.

38.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

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39.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

40.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

41.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

FIFTH CLAIM FOR RELIEF

(ORS 659A.030 – Hostile Work Environment)

42.

Plaintiff realleges paragraphs 1 through 41.

43.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

44.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

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45.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

46.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

SIXTH CLAIM FOR RELIEF

(ORS 659A.199 – Whistleblowing)

47.

Plaintiff realleges paragraphs 1 through 46.

48.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

49.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

50.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

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51.

Plaintiff is entitled to recover costs and attorney fees pursuant to
ORS 659A.885.

SEVENTH CLAIM FOR RELIEF

(ORS 659A.040 – Injured Worker Discrimination)

52.

Plaintiff realleges paragraphs 1 through 51.

53.

As a result of being discharged, Plaintiff has incurred lost wages
and benefits, the exact amount to be proven at trial.

54.

Defendant's conduct caused Plaintiff mental stress, humiliation,
inconvenience and loss of enjoyment of life all to his nonpecuniary loss in
the amount of \$2,000,000.

55.

Defendant's conduct was done with reckless indifference to
Plaintiff's federally protected rights. Defendant should be assessed
punitive damages in an amount of up to \$4,000,000.

56.

Plaintiff is entitled to recover costs and attorney fees pursuant to
ORS 659A.885.

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EIGHTH CLAIM FOR RELIEF

(ORS 659A.109 – Disabled Worker Discrimination)

57.

Plaintiff realleges paragraphs 1 through 56.

58.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

59.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

60.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

61.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

NINTH CLAIM FOR RELIEF

(ORS 659A.112/118 – Disabled Worker Discrimination/Failure to Engage/Accommodate)

62.

Plaintiff realleges paragraphs 1 through 61.

63.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

64.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

65.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

66.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

TENTH CLAIM FOR RELIEF

(ORS 652.355/ORS 653.060 – Wage Complaint Retaliation)

67.

Plaintiff realleges paragraphs 1 through 66.

68.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

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69.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

70.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

71.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

ELEVENTH CLAIM FOR RELIEF

(659A.355 – Wage Complaint Retaliation)

72.

Plaintiff realleges paragraphs 1 through 71.

73.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

74.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

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75.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

76.

Plaintiff is entitled to recover costs and attorney fees pursuant to ORS 659A.885.

TWELVTH CLAIM FOR RELIEF

(ORS 653.601 et seq. – Oregon Sick Time Law)

77.

Plaintiff realleges paragraphs 1 through 76.

78.

As a result of being discharged, Plaintiff has incurred lost wages and benefits, the exact amount to be proven at trial.

79.

Defendant's conduct caused Plaintiff mental stress, humiliation, inconvenience and loss of enjoyment of life all to his nonpecuniary loss in the amount of \$2,000,000.

80.

Defendant's conduct was done with reckless indifference to Plaintiff's federally protected rights. Defendant should be assessed punitive damages in an amount of up to \$4,000,000.

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81.

Plaintiff is entitled to recover costs and attorney fees pursuant to
ORS 659A.885.

THIRTEENTH CLAIM FOR RELIEF

(ORS 659.030(1)(f) – Retaliation for Opposing Unlawful Practices)

82.

Plaintiff realleges paragraphs 1 through 81.

83.

As a result of being discharged, Plaintiff has incurred lost wages
and benefits, the exact amount to be proven at trial.

84.

Defendant's conduct caused Plaintiff mental stress, humiliation,
inconvenience and loss of enjoyment of life all to his nonpecuniary loss in
the amount of \$2,000,000.

85.

Defendant's conduct was done with reckless indifference to
Plaintiff's federally protected rights. Defendant should be assessed
punitive damages in an amount of up to \$4,000,000.

86.

Plaintiff is entitled to recover costs and attorney fees pursuant to
ORS 659A.885.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For permanent injunctive relief enjoining Defendant, its officers, employees and agents from engaging in any discrimination;
2. Economic damages, including past and future wage loss, in an amount to be determined at trial,
3. Non-economic damages of \$2,000,000 for each claim;
4. Punitive damages in the amount of \$4,000,000 for each claim;
5. Reasonable costs and attorney fees; and
6. For such other and further relief as the Court may deem just and equitable.

DATED this 8th day of July 2019.

GILROY | NAPOLI | SHORT LAW GROUP

/s/ Jeff Napoli
JEFF NAPOLI, OSB #990868
Attorney for Plaintiff